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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,848	06/15/2001	F. David Stallworth	20009.0058US01 (01026)	6723
45695 7590 01/15/2008 WITHERS & KEYS FOR BELL SOUTH P. O. BOX 71355 MARIETTA, GA 30007-1355			EXAMINER SHELEHEDA, JAMES R	
			ART UNIT 2623	PAPER NUMBER
			MAIL DATE 01/15/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/880,848

Applicant(s)

STALLWORTH, F. DAVID

Examiner

James Sheleheda

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/15/07 has been entered.

Claim Objections

2. Claim 1 is objected to because of the following informalities:

In claim 1, line 11, "transmits" should be changed to --transmitting--.

Appropriate correction is required.

Response to Arguments

3. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6, 8, 10-12, 17-21 and 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Tomich et al. (Tomich) (5,983,068).

As to claim 1, Tomich discloses a system for delivering to a subscriber located on a second side of a right of way a first signal that is free from a right-of-way franchise fee (Fig. 1; column 3, lines 31-49), the system comprising:

(a) a central office located on a first side of a right-of-way (service providers providing the television, phone or data signals located outside of the local neighborhood; column 4, lines 10-23, Fig. 1);

(b) a multiplexer in communication with the central office (Fig. 1 and 6; head end unit, 20; column 8, lines 26-46), wherein the central office transmits a second signal to the multiplexer (transmitting the wired cable, phone or data signals; Fig. 6; column 4, lines 10-23), the multiplexer being located on the second side of the right-of-way opposite the first side such that the second signal must cross the right-of-way to reach the multiplexer (the head end unit, 20, being located on the private residential property; Fig. 1);

(c) a wireless receiver located on the second side of the right-of-way (102, 104, 106, Fig. 6), the wireless receiver receiving the first signal and transmitting the first signal to the multiplexer (column 8, lines 26-46 and column 4, lines 10-24), the multiplexer combining the second signal and the first signal into a combined signal for routing to the subscriber (column 8, lines 26-46 and column 7, lines 54-61), the

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combined signal being comprised of at least two of a video signal, a voice signal and a data signal (wherein the incoming signals may be video, telephone or data; column 4, lines 10-24 and column 7, lines 54-61), where the first signal does not contain the same type of signal as the second signal (video, voice and data; column 4, lines 10-24); and an optical network unit on the second side of the right of way in communication with the multiplexer (within the user set top box, 24; column 4, lines 37-47), and in communication with the subscriber (Fig. 2; column 4, lines 24-37), wherein the unit separates the combined signal into the first and second signal (column 5, lines 36-57).

As to claim 2, Tomich discloses an optical network unit (within the user set top box, 24; column 4, lines 37-47) in communication with the multiplexer (Fig. 1 and 2), wherein the optical network unit receives the combined signal from the multiplexer (column 4, lines 24-47 and column 5, lines 36-57), separates the combined signal into the first and second signal (column 5, lines 36-57) and routes the first signal and second signal to the subscriber (Fig. 2; column 5, lines 36-57).

As to claim 3, Tomich discloses wherein the first signal is a video signal (column 4, lines 10-23), and the second signal is a data signal (column 4, lines 10-23).

As to claim 4, Tomich discloses wherein the first signal is a data signal (column 4, lines 10-23) and the second signal is a video signal (column 4, lines 10-23).

As to claim 5, Tomich discloses wherein the wireless receiver receives the first signal as an electronic signal (column 4, lines 10-23) and converts the signal to a fiber optical signal to deliver the first signal through a fiber optic strand to the multiplexer (column 4, lines 10-43).

As to claim 6, Tomich discloses wherein the wireless receiver is a radio receiver (RF satellite and wireless receivers; column 4, lines 10-23).

As to claim 8, Tomich discloses wherein the first signal is transmitted over a first wavelength and wherein the second signal is transmitted over a second wavelength that is different then from the first wavelength (wherein the signal types have different transmission frequencies and thus different wavelengths; column 4, lines 10-23).

As to claim 10, Tomich discloses wherein the right-of-way franchise fee is imposed by a local governing authority (wherein a right-of-way franchise fee *is* a government imposed fee).

As to claim 11, Tomich discloses a method for delivering to a subscriber a first signal that is subject to right-of-way franchise fees (Fig. 1; column 3, lines 31-49), wherein the method comprises the step of:

(a) transmitting a second signal from a first side of the right of way (service providers providing the television, phone or data signals located outside of the local

neighborhood; column 4, lines 10-23, Fig. 1), through the right of way, to a second side of the right of way, wherein the first side is opposite the second side, the second signal comprising at least a voice signal (PSTN telephone signals; column 4, lines 10-24);

(b) receiving via a wireless communication the first signal on the second side of the right-of-way such that the first signal does not pass through the right-of-way (wireless signal received on the private residential property; Fig. 1), the first signal comprising at least one of a video signal and a non-video data signal (satellite video and wireless data providers; column 4, lines 10-23),

(c) combining the first signal and the second signal into a combined signal on the second side of the right of way (column 8, lines 26-46 and column 7, lines 54-61),

(d) routing the combined signal in the direction of the subscriber (Fig. 1; column 8, lines 26-46 and column 7, lines 54-61), wherein the subscriber is on the second side of the right-of-way (residential neighborhood; Fig. 1);

(e) separating the combined signal into the first signal and the second signal (column 4, lines 24-47 and column 5, lines 36-57); and

(f) routing the first signal and the second signal to the subscriber (Fig. 2; column 5, lines 36-57).

As to claim 12, Tomich discloses wherein the wireless communication is satellite communication (column 4, lines 10-24), and wherein the step of receiving the first signal comprises receiving the first signal with a satellite receiver located on the second side of

the right of way (at satellite dish, 102 or 104 at the local residential head end; column 4, lines 10-24).

As to claim 17, Tomich discloses wherein the step of receiving the first signal comprises receiving the first signal as an electronic signal (column 4, lines 10-23) and converting the first signal from the electrical signal to a fiber optic signal (column 4, lines 10-43).

As to claim 18, Tomich discloses wherein the first signal is a video signal (column 4, lines 10-23), and the second signal is at least one of a telephony signal and a data signal (column 4, lines 10-23).

As to claim 19, Tomich discloses wherein the first signal is at least one of a telephony signal and a data signal (column 4, lines 10-23), and the second signal is a video signal (column 4, lines 10-23).

As to claim 20, Tomich discloses a method for delivering to a subscriber a first signal that is free of right-of-way franchise fees (Fig. 1; column 3, lines 31-49), wherein the method comprises the step of:

(a) transmitting a second signal from a central office through a right of way (service providers providing the television, phone or data signals located outside of the local neighborhood; column 4, lines 10-23, Fig. 1) to a multiplexer (column 8, lines 26-

46 and column 7, lines 54-61), wherein the central office is located on a first side of the right of way and the multiplexer is located on a second side of the right of way opposite the first side (column 4, lines 10-23, Fig. 1), the second signal comprising at least a voice signal (PSTN telephone signals; column 4, lines 10-24);

(b) receiving the first signal at a wireless receiver (102, 104 and 106), located on the second side of the right-of-way (wireless signal received on the private residential property; Fig. 1), the first signal comprising at least one of a video signal and a non-video data signal (satellite video and wireless data providers; column 4, lines 10-23),

(c) transmitting the first signal from the wireless receiver to the multiplexer (column 8, lines 26-46 and column 7, lines 54-61) without crossing the right of way (Fig. 6);

(d) combining the first signal and the second signal into a combined signal at the multiplexer (column 8, lines 26-46 and column 7, lines 54-61);

(e) routing the combined signal from the multiplexer to a local terminal (Fig. 1; column 8, lines 26-46 and column 7, lines 54-61) that is located on the second side of the right of way (residential neighborhood; Fig. 1);

(f) separating the combined signal into the first signal and the second signal at the local terminal (column 4, lines 24-47 and column 5, lines 36-57); and

(f) routing the first signal and the second signal from the local terminal to the subscriber (Fig. 2; column 5, lines 36-57) wherein the subscriber is located on the second side of the right-of-way (residential neighborhood; Fig. 1).

As to claim 21, Tomich discloses wherein the wireless receiver is a satellite receiver (column 4, lines 10-23) and the step of receiving the first signal comprises receiving the first signal in a satellite communication and converting the first signal from an electronic signal to a fiber optical signal (column 4, lines 10-43).

As to claim 24, Tomich discloses wherein the first signal is a video signal (column 4, lines 10-23), and the second signal is at least one of a telephony signal and a data signal (column 4, lines 10-23).

As to claim 25, Tomich discloses wherein the first signal is at least one of a telephony signal and a data signal (column 4, lines 10-23), and the second signal is a video signal (column 4, lines 10-23).

As to claim 26, Tomich discloses a system for delivering to a subscriber a first signal that is subject to right-of-way franchise fees (Fig. 1; column 3, lines 31-49), wherein the system comprises:

(a) means for transmitting a second signal from a first side of a right of way (service providers providing the television, phone or data signals located outside of the local neighborhood; column 4, lines 10-23, Fig. 1), through the right of way, to a second side of the right of way (column 8, lines 26-46 and column 7, lines 54-61), wherein the first side is opposite the second side (column 4, lines 10-23, Fig. 1), the second signal comprising at least a voice signal (PSTN telephone signals; column 4, lines 10-24);

(b) means for via a wireless communication (102, 104 and 106) the first signal on the second side of the right-of-way such that the first side does not pass through the right of way (wireless signal received on the private residential property; Fig. 1), the first signal comprising at least one of a video signal and a non-video data signal (satellite video and wireless data providers; column 4, lines 10-23),

(c) means for combining the first signal and the second signal into a combined signal on the second side of the right of way (multiplexer; column 8, lines 26-46 and column 7, lines 54-61);

(d) means for routing the combined signal in the direction of the subscriber (Fig. 1; column 8, lines 26-46 and column 7, lines 54-61), wherein the subscriber is on the second side of the right of way (residential neighborhood; Fig. 1);

(e) means for separating the combined signal into the first signal and the second signal (demultiplexer; column 4, lines 24-47 and column 5, lines 36-57); and

(f) means for routing the first signal and the second signal to the subscriber (Fig. 2; column 5, lines 36-57).

As to claim 27, Tomich discloses wherein the first signal is a video signal (column 4, lines 10-23), and the second signal is at least one of a telephony signal and a data signal (column 4, lines 10-23).

As to claim 28, Tomich discloses wherein the first signal is at least one of a telephony signal and a data signal (column 4, lines 10-23), and the second signal is a video signal (column 4, lines 10-23).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7, 9, 13-16, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomich and further in view of Applicant's admitted prior art.

As to claim 7, while Tomich discloses a multiplexer to combine video and data signals, he fails to specifically disclose a wave division multiplexer.

Applicant's conceded that the prior art discloses the use of a wave division multiplexer (see specification at page 5, paragraph 13) when combining video and data signals for distribution over an optical network (see specification at page 5, paragraph 13) which is smaller and lighter than traditional copper and coaxial cables but can carry much more information (see specification at page 2, paragraph 2) to transmit the video and data signals over different frequencies (see specification at page 5, paragraph 13) for the benefit of ensuring that the data and video signals to be distinguished from one another over a fiber optic wire (paragraph 13) which carries more information over a smaller lighter wire (paragraph 2).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Tomich's system to include a wave division multiplexer, as taught by applicant's conceded prior art, for the benefit of ensuring that the data and video signals to be distinguished from one another when transmitting over a fiber optic wire.

As to claim 9, while Tomich discloses a multiplexer to combine a first video signal and a second data signal at different wavelengths, he fails to specifically disclose wherein the first signal is transmitted over a 1550 nanometer wavelength and the second signal is transmitted over a 1310 nanometer wavelength.

Applicant's conceded that the prior art discloses the use of multiplexer (see specification at page 5, paragraph 13) when combining video and data signals for distribution over an optical network (see specification at page 5, paragraph 13) which is smaller and lighter than traditional copper and coaxial cables but can carry much more information (see specification at page 2, paragraph 2) to transmit a first video signal over a 1550 nanometer wavelength (see specification at page 5, paragraph 13) and a second data signal over a 1310-nanometer wavelength (see Applicant's specification at page 5, paragraph 13) for the benefit of ensuring that the data and video signals to be distinguished from one another over a fiber optic wire (paragraph 13) which carries more information over a smaller lighter wire (paragraph 2).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Tomich's system to include wherein the first signal is

transmitted over a 1550 nanometer wavelength and the second signal is transmitted over a 1310 nanometer wavelength, as taught by applicant's conceded prior art, for the benefit of ensuring that the data and video signals to be distinguished from one another when transmitting over a fiber optic wire.

As to claim 22, while Tomich discloses a multiplexer to combine video and data signals, he fails to specifically disclose a wave division multiplexer.

Applicant's conceded that the prior art discloses the use of a wave division multiplexer (see specification at page 5, paragraph 13) when combining video and data signals for distribution over an optical network (see specification at page 5, paragraph 13) which is smaller and lighter than traditional copper and coaxial cables but can carry much more information (see specification at page 2, paragraph 2) to transmit the video and data signals over different frequencies (see specification at page 5, paragraph 13) for the benefit of ensuring that the data and video signals to be distinguished from one another over a fiber optic wire (paragraph 13) which carries more information over a smaller lighter wire (paragraph 2).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Tomich's system to include a wave division multiplexer, as taught by applicant's conceded prior art, for the benefit of ensuring that the data and video signals to be distinguished from one another when transmitting over a fiber optic wire.

As to claim 13, while Tomich discloses wherein the step of combining the first and second signal comprises receiving the first signal and the second signal at a multiplexer and multiplexing the first signal with the second signal using the multiplexer, he fails to specifically disclose a wave division multiplexer.

Applicant's conceded that the prior art discloses the use of a wave division multiplexer (see specification at page 5, paragraph 13) when combining video and data signals for distribution over an optical network (see specification at page 5, paragraph 13) which is smaller and lighter than traditional copper and coaxial cables but can carry much more information (see specification at page 2, paragraph 2) to transmit the video and data signals over different frequencies (see specification at page 5, paragraph 13) for the benefit of ensuring that the data and video signals to be distinguished from one another over a fiber optic wire (paragraph 13) which carries more information over a smaller lighter wire (paragraph 2).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Tomich's to include a wave division multiplexer, as taught by applicant's conceded prior art, for the benefit of ensuring that the data and video signals to be distinguished from one another when transmitting over a fiber optic wire.

As to claim 14, Tomich and Applicant's admitted prior art disclose wherein the step of routing the combined signal comprises routing the combined signal from the

wave division multiplexer to a splitter that is in communication with the subscriber (see Tomich at column 5, lines 37-57).

As to claim 16, Tomich and Applicant's admitted prior art disclose wherein the splitter includes a wave division de-multiplexer (required to separate the wave division multiplexed signals; see Applicant's specification at paragraphs 13-14), and the step of separating the combined signal comprises separating the combined signal with the wave division de-multiplexer (required to separate the wave division multiplexed signals; see Applicant's specification at paragraphs 13-14).

As to claims 15 and 23, while Tomich discloses wherein the step of separating the combined signals comprises transmitting the combined signal to a de-multiplexer that separates the combined signal into the first signal and the second signal (column 5, lines 37-57), he fails to specifically disclose a wave division de-multiplexer.

Applicant's conceded that the prior art discloses the use of a wave division multiplexer (see specification at page 5, paragraph 13) when combining video and data signals for distribution over an optical network (see specification at page 5, paragraph 13) which is smaller and lighter than traditional copper and coaxial cables but can carry much more information (see specification at page 2, paragraph 2) to transmit the video and data signals over different frequencies (see specification at page 5, paragraph 13) to a wave division de-multiplexer (required to separate the wave division multiplexed signals; see Applicant's specification at paragraphs 13-14) for the benefit of ensuring

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that the data and video signals to be distinguished from one another over a fiber optic wire (paragraph 13) which carries more information over a smaller lighter wire (paragraph 2).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Tomich's system to include a wave division de-multiplexer, as taught by applicant's conceded prior art, for the benefit of ensuring that the data and video signals to be distinguished from one another when transmitting over a fiber optic wire.

Conclusion

8. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

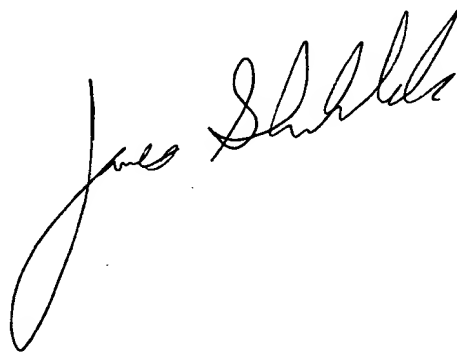
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Sheleheda
Patent Examiner
Art Unit 2623

JS

A handwritten signature in black ink, appearing to read "James Sheleheda", written in a cursive style.